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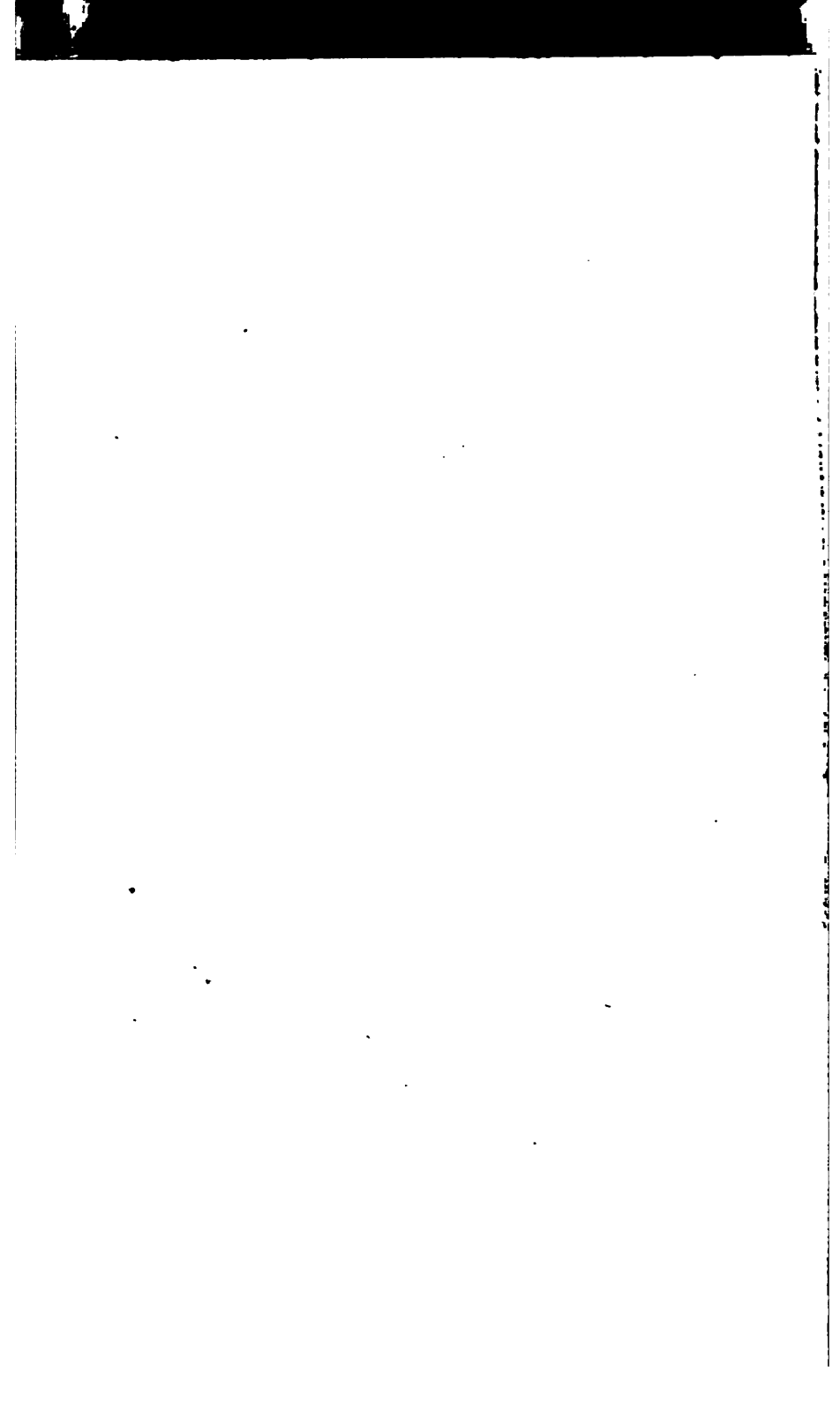
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With Mr Rainy's Comments.

A BRIEF EXPOSITION

OF

SOME EXISTING ABUSES,

REGARDING THE

TRANSFER OF REAL PROPERTY

BY

PUBLIC AUCTION AND PRIVATE CONTRACT;

WITH THE OUTLINE OF

A PROPOSED REMEDY,

BY

ALEXANDER RAINY,

AGENT FOR REAL PROPERTY IN GENERAL.



A BRIEF EXPOSITION

REGARDING

THE TRANSFER OF REAL PROPERTY.

WHEN the importance which is attached to the acquirement and possession of Real Property is considered, and it is known, that some millions in value, throughout the United Kingdom, is annually on the market for transfer, it becomes essential to obtain such an equitable system for effecting it, as may secure the public confidence, and be satisfactory, both to Vendors and Purchasers; who, it is presumed, as they are continually changing position, are alike interested in the result.

That few modes can be less conducive to the legitimate interests of those who have Property for Sale, than that which has prevailed in some quarters, with all the extravagant and extraordinary embellishments, which accompany it, a moment's reflection will sufficiently prove; because, instead of its operating to encourage and increase inquiry, from those who

are in pursuit of purchases, it has a tendency to check it, and particularly with the higher classes, from the fear of deception; and whilst the owners are exposed to *enormous expenses*, that are entirely superfluous, the transfer is constantly retarded; or when accomplished, is often at a sacrifice: and the character of a profession which might otherwise hold an honorable place amongst commercial avocations, is brought into disrepute, and degraded in the public estimation.

It has doubtless been matter of surprise and speculation with many, why it has happened, that this peculiar line of action should so long have flourished, "with all its blushing honors thick upon it;" and that business of apparently great extent, should have accrued to the individuals most prominent in such a method of proceeding; but however veiled in mystery this may have been to the world, it cannot be denied that its success is chiefly to be traced to the pecuniary inducements which are held out by Auctioneers and Agents, to Solicitors, for the exercise of their influence with the Owners; the reward being a Share in the Commission, and other charges made on the Sale of the Property; and notwithstanding that there are, fortunately, a great number of the members of that branch of the legal profession, who would reject all such overtures, with the contempt which they merit; the fact has attained notoriety (except with the owners, from whom the secret compacts are studiously concealed), that a mass of Solicitors, both in London and the Country, grasp at patronage thus to traffic with it, and do permit themselves to be embarked in these understandings and arrangements, reconciled perhaps to them, as "a thing of custom;" and it is equally true, that attempts have been made to create a prejudice against, and to exclude as much as possible, the few Auctioneers and Agents, who have disdained to compromise themselves, by subscribing to the practice.

Again, there are a number of mere adventurers, who style themselves Estate and Land and House Agents, and who, under pretence of being employed (having, however, no authority) occasionally succeed in entrapping the unwary. Many of them are located at the west end of London, and in some of the provincial towns, and their ambition to exclude the daylight, is manifested by their covering the windows of their shops with placards of property with which they have no concern. A few, of a bolder class, publish fictitious lists of estates offered by them for sale, giving "to airy nothing a local habitation and a name," and add to them statements, in elucidation of the vast extent of their monied connections, that they are empowered to invest several millions in landed property, but which, investigation, generally shows to have existed only in the fertility of their imaginations. Another part of their plan is, to write to owners, professing that they have customers to offer ; but it mostly occurs, when the applications are listened to, and this voluntary interference recognized, that disappointment ensues, or that the owner finds, *even if the property is not depreciated in the market before it is sold*, that several claims for payment of commission are set up which he never anticipated, and that he is involved in dispute and litigation.

With the desire to remedy these abuses, it is proposed to establish, at this Gallery and Office,

A GENERAL REGISTER,
FOR THE TRANSFER OF REAL PROPERTY
Of every description,

SITUATE IN ANY PART OF THE UNITED KINGDOM,

AND ALSO OF

THE BEST CLASS OF RESIDENCES IN LONDON ;

In which will be inserted only such Particulars as have the sanction and authority of the Owners ; and free from all exaggeration, or inventive embellishment,

Under the following Regulations :—

- I. THAT the Register shall be confined to Properties of the value, in one sum, of £.2000, and upwards.
- II. That the charge for Registering Particulars shall be One Pound on each Property.
- III. That the Scale of Commission shall be One Pound upon each £.100 up to £.10,000, and Ten Shillings upon each £.100 above that sum.

To be chargeable to the Vendor on the transfer being effected, either through the medium of a negotiation commenced or concluded, at the Office of Registry, or in consequence of information derived therefrom.

- IV. That the owners shall be at liberty to control and limit the expenses of advertisements in the newspapers, and other incidental matters, the advertisements, &c. being chargeable as disbursements, and separate from the Commission.

- V. That the Register shall be accessible to all inquirers of respectability (*gratis*); but that applicants for information shall previously write down their real names and address, that the Vendors may be protected as much as possible against the improper use of information, and to guard against disputes as to claims for Commission.
- VI. That the Register for Property in England, shall be arranged in the following divisions of counties:—

First Division.

Middlesex.
Buckinghamshire.
Oxfordshire.
Berkshire.
Hertfordshire.
Bedfordshire.

Second Division.

Cambridgeshire.
Huntingdonshire.
Northamptonshire.
Essex.
Suffolk.
Norfolk.

Third Division.

Kent.
Surrey.
Sussex.
Hampshire,
(including the
Isle of Wight.)

Fourth Division.

Wiltshire.
Dorsetshire.
Somersetshire.
Devonshire.
Cornwall.

Fifth Division.

Herefordshire.
Monmouthshire.
Gloucestershire.
Worcestershire.
Warwickshire.

Sixth Division.

Staffordshire.
Shropshire.
Cheshire.
Lancashire.

Seventh Division.

Rutlandshire.
Leicestershire.
Lincolnshire.
Nottinghamshire.
Derbyshire.

Eighth Division.

Yorkshire.
Westmoreland.
Durham.
Cumberland.
Northumberland.

and that separate Registers shall be kept for
North and South Wales,—Scotland,—Ireland,—and London.

VII. That an authorized list shall be published the first Saturday in the months of March, April, May, June, July, and August, in each year, containing an outline of each property on the Register (excepting such as the owners may direct to be kept private), and circulated in London, Edinburgh, Glasgow, Dublin, Manchester, Liverpool, Birmingham, Bath, Bristol, Leeds, York, and every principal city and town throughout the Kingdom, at the expense per month of a single advertisement to each owner.

With regard to all sales of property by public auction, a similar rule will be acted upon as to the accuracy of the particulars; and any difference in the rate of commission which may reasonably attach to the circumstances of the case, or of an estate being divided into lots, will be previously explained, and the amount limited by specific agreement.

VIII. That upon every transaction, either by public auction or private contract, the deposit money paid down by the purchaser, shall be lodged at the banking house of Messrs. Coutts and Co. in the Strand, in the joint names of the purchaser and agent, to wait the completion of the purchase; and whenever it shall happen that the settlement of a purchase is delayed beyond the day fixed by the contract, the purchaser shall be at liberty to require that the deposit be invested in Exchequer bills, at his risk, and for his benefit, the said bills to remain at the banking house of Messrs. Coutts and Co. in the same joint names until the purchase be completed; but the agent shall be at liberty to deduct the commission, auction duty (if any), and expenses, previously to lodging the deposit; and the vendor and himself shall be severally and jointly responsible to the purchaser for that amount, in case of a sale going off from defect of title.

In all cases of Sales, made on behalf of Parties recommended by any Banking Establishment, or by either of the Partners, the Deposits on such Sales shall be lodged (with the consent of the Purchasers) at that Banking House, in the same manner as at Messrs. Coutts and Co's.

Lastly, As it frequently occurs that owners, trustees, or executors, require temporary advances, in anticipation of sales, by auction, these advances will be made (the security and the parties being previously approved of) with as little delay as the nature of the particular case may admit.

It is confidently trusted that the advantages and utility of the arrangement these proposals embrace, will be sufficiently obvious to claim consideration and attention, especially from the landed interest, and wealthier classes; the great object in view, being to counteract and destroy quackery, and to suppress those practices which are derogatory; but without opposition to, or interference with, the fair, just, and consistent rights of Solicitors; and to establish a system of Agency, as between Vendors and Purchasers, based on integrity of principle, and conducted with truth, impartiality, and independence, calculated, it is hoped, to afford increased facilities in these transactions, at a considerable saving of expense, of time and trouble, and with perfect security to the public.

Office for Real Property,

No. 14, REGENT STREET, LONDON,

(In the Division between Piccadilly and Pall Mall,)

January 1838.

COMMISSION OF EXCISE INQUIRY.

AUCTIONS.

14th of August, 1834.

MR. ALEXANDER RAINY *called in, and examined.*

YOU have been an auctioneer and agent in general business some years, and you are therefore acquainted with the excise laws and regulations affecting your business as an auctioneer ?

Yes.

Which of the branches is it you are chiefly engaged in ?

Chiefly real property.

Have you any suggestion to make with reference to the excise regulations and duties ?

I beg to submit to the consideration of the Commissioners the expediency of abandoning the present auction duty of 7*d.* in the pound on estates and other property transferred by deed or writing, and taking it in another mode, if the state of the revenue will not admit of relinquishing it altogether ; it has always appeared to me to be an unequal, oppressive, and impolitic tax. Property may be sold by private contract (the stamp duty upon the conveyance being equal in both cases) without any duty attaching ; whereas, if any distinction is to exist, it should be in favour of auctions, for, independently of this duty, the Government derive a duty from advertisements, and also upon paper, for the particulars of sale, from which many transfers by private contract are free. Again, a considerable portion of the vendors who resort to the public market, have charges upon their estates, and may be compelled by circumstances to sell ; and it seems unfair that they should be exposed to a tax of 7*d.* in the pound, whilst other vendors differently placed are exempt. It is also a tax which the Government cannot be certain of collecting ; because, an estate may be put up with an understanding that it shall be bought in, and then the tax is not payable, although the estate may be sold immediately afterwards by private contract. What I have therefore to propose is, that the tax should be entirely abolished ; and if the amount of revenue at present received cannot be dispensed with, that there should be an additional *ad valorem* of one per cent. upon all transfers of real property conveyed by deed or written instrument, whether sold by auction or private contract, which the Government would be certain of

realizing, because the conveyance would not be valid without a proper stamp ; and I conceive that the proposed additional duty of one per cent. riding over the whole mass of property so transferred, would more than reimburse the Government from any loss they might sustain by giving up this portion of the auction duty, *besides placing all vendors and purchasers of real property on an equal footing.*

In point of fact, are not very few large estates sold by auction ?

Many that are put up by auction are bought in and many sold, but the duty operates as a fetter upon the market, whereas every thing which can tend to give elasticity to it (and which would, I presume, result from removing the existing impediments, and bringing the vendors and purchasers fairly into the field), must benefit the revenue ; at present there is a reason, on account of this high duty, why vendors and purchasers should not meet in the public market, and it is a great check to competition. I believe that the tax was originally levied under the impression that the vendor at public auction obtained an advantage by competition, and that, therefore, he ought to pay for it ; but the tax deprives him of it, and prevents many purchasers from appearing at auctions, both vendors and purchasers endeavouring to avoid the payment. The liability to the auction duty appears in the front of the transaction ; but in the case of a stamp on the conveyance, the revenue is derived indirectly and also impartially.

What is the amount of the present auction duty upon an estate of 10,000*l.* ?

The auction duty at present is 29*l.* 13*s.* 4*d.*

What is the tax upon the conveyance at present ?—110*l.*

Perhaps at no period could the remission or alteration in this tax be more called for than now, as there is every prospect that the transfer of property will be very considerable in the next few years, owing to the incumbrances and charges which were created during the period of agricultural prosperity and an extended currency and credit ; and when the incumbancers or mortgagees imagine the security to be doubtful, from the altered value a variety of circumstances have led to produce, they will press the owners for a settlement of the accounts ; and many estates, or portions of them, will pass out of the hands of families who have possessed them for ages.

What do you propose with regard to other kinds of property ?

As respects personal or chattel property, I cannot separate from it the object of suppressing fraudulent or mock auctions. Hitherto the duty has been 5 per cent. upon chattels and effects generally, except plate and jewels, which are liable to 7*d.* in the pound ; and lots bought in have been allowed to pass

free of duty—where however the property is genuine, there is comparatively a small portion bought in. For the benefit of the public, both in their capacity of vendors or purchasers (and as they are perpetually changing position, all are equally interested), it would be desirable to put a stop to all mock or surreptitious auctions; and if the vendors of genuine property had only a duty of $2\frac{1}{2}$ per cent. to pay upon all chattel property put up for sale, whether sold or not, the reduction of half the present duty would be a compensation: still I would admit that any special lots which the owner might not choose to sell, except at a certain price, should be put up at that price, and if there was a bidding, the duty should attach: otherwise, the lot might be withdrawn and should not be liable to duty. This would be one means of destroying mock auctions. *Unfortunately, that which may be termed a mock auction, is not confined to such as are daily carried on in shops, to be observed in passing along the Strand, the Poultry, and other places; but the practice has been, and is, indulged in very extensively in many other quarters; and the public confidence has been most shamefully abused by gross deceptions and every species of trickery and quackery.*

Would not your plan make it quite as easy or even more easy to evade the duty?

I think, on the contrary, that the operation of it would be, that the Government would get the duty. Many persons who have genuine property for sale might prefer the risk of paying the duty on a few lots bought in, to declaring the upset price, especially if they had only $2\frac{1}{2}$ per cent. duty to pay on lots sold, instead of 5.

But in this case, are you not in some degree, imposing an additional tax, because at present when a man buys in, he is not liable?

I think it could hardly be called an additional tax; but then the genuine vendor will get more than an equivalent, by the reduction of the duty from 5 to $2\frac{1}{2}$ per cent. upon what he sells.

Supposing that his buyings-in are greater than his sales?

That is rarely, if ever the case, except in mock auctions; and I am only suggesting what may appear beneficial for fair and honorable transactions, and with the desire to put an end to those which are otherwise. I will suppose that the amount of genuine chattel property brought to sale in one year by an auctioneer, to be 50,000*l.*,—my belief is, that the average amount bought in would not exceed 10 per cent. or, 5,000*l.*; $2\frac{1}{2}$ per cent. payable upon 5,000*l.* is 125*l.*, and the amount the vendors would save by the difference of duty upon the remaining 45,000*l.*, would be 1,125*l.*; but then, in proportion as the public confidence increased in the equitable nature of auctions, and the security afforded against imposition, the revenue would be improved by the number of them. In consequence of the difficulty of distinguishing between mock and genuine auctions, a jealousy exists in the public mind, which it is the interest

of Government, and of those auctioneers who lay claim to respectability, to remove; for, whilst it remains, the real vendor has not that fair chance in the market which otherwise he would have, nor do the Government obtain so large a revenue.

Can you offer any other suggestions for the improvement of the Excise regulation, as to your profession?

Some respectable auctioneers have been very anxious, that an arrangement should be accomplished, by which the character of their professional pursuits might be relieved from the prejudice and disrepute which have been brought upon it: at the same time, it is not sought by them to establish any monopoly, or to exclude the respectable person of moderate business; on the contrary, whatever is the nature of the profession, the fair opportunity should be afforded to every man of proceeding to the highest branch of it; and, as a preliminary step to the attainment of this object, some improvement should be adopted with regard to the licences. At present, a certain sum is paid for the licence to act as an auctioneer, another licence is required to sell plate, a third for wines, and other distinct licences for different commodities; but I think it would be better to consolidate them; and I propose that each auctioneer, who shall be entitled to sell estates, and all kinds of property, shall pay 50*l.* per annum for his licence, and that the amount of the securities should be increased; but that any auctioneer intending to confine his business to chattel property, should pay for such licence 25*l.* per annum; that, instead of the licence being taken out on the 5th of July, it should be granted on the 1st of January in each year; that every auctioneer should give three months previous notice of his intention to take out a licence, with his address, and the names and address of his sureties, which should be written at full length in a book at the Excise Office, and open to the inspection of the auctioneers; and any auctioneer should be at liberty, on any subsequent 1st of January, by giving three months previous notice, to take out the larger licence; but it should be in the power of the Board of Excise to refuse a licence to any person, upon its being shown to their satisfaction that the application for a licence comes from a disreputable person. By this plan an additional security would be given to the public, and also to the Government, against fraud or imposition.

Were you regularly articulated to the profession?

I was; and there are several other auctioneers who have served a regular articulated clerkship; but the greater portion are interlopers, who, having failed in their original calling, designate themselves estate-agents and auctioneers; they open shops, and placard their windows with announcements of property (the particulars being obtained under false pretences), and represent to applicants that they are authorized to act for owners whom they never saw, or who probably never heard their names; others seek to establish themselves, and have obtained much business, by entering into a compact, which is styled 'the reciprocity system,' (*kept secret from the owners,*) to allow a share of the commission, or a

portion of their charges, to solicitors, architects, upholsterers, and others, who grasp at the patronage of the nobility, gentry, and persons of property, to barter it for gain, and attempts are made to exclude those auctioneers who will not *condescend* to any such arrangement. It would, therefore, be desirable, and for the interest of all persons of rank and property, to keep their patronage in their own hands, and to dispense it direct, instead of through intermediate channels.

What is your opinion as to the notices ?

Mr. Forrest, of the late firm of Messrs. Skinner, Dyke, and Forrest, recommended, and I concurred with him, that, in exchange for the notice-particulars or catalogue, the Excise should grant a certificate for holding the particular day or days' auction, and that the auctioneer should pay 1*l.* for every day's auction he may hold. This regulation would shut up the mock-auction shops, and ought not to be objected to by any respectable auctioneer. The real name and address of the auctioneer should be printed upon the particular or catalogue; and no sale should be held by a written particular or catalogue.

Are not the auctioneers bound either to present a printed or written catalogue at the Excise office ?

Yes.

With respect to the mock auctions in the Strand, the Poultry, &c. do you suppose these people give a catalogue ?

No.

Do you suppose that they take out a licence ?

I suppose not.

At present the Excise depend upon your return of the property sold ?

We used to make oath ; now it is a declaration, and if there is any informality in the declaration, we are liable to a penalty.

Has the Excise officer access to your sale-book, or particulars of sale ?

Not at present : a copy of the particular or catalogue is made, and we pass our account every month.

Do you consider that the duty itself is a very great check upon the transfer of property by auction ?

Certainly, upon estates it is a very serious check ; the duty at present on a sum of 100,000*l.* being 2,916*l.* 13*s.* 4*d.* Mr. Goulburn's Bill went to take a graduated scale, decreasing as the amount of the sale increased ; but that the duty should attach whether the estate was sold or not.

Was it opposed ?

Yes, and the impracticability shown of carrying such a measure into operation as regarded estates, as no one would offer an estate at auction with such a liability, and the Bill was abandoned.

Do you pay the money yourself to the collector ?

I do.

Is that done with ease and facility to yourself ?

Yes : I think it is very well regulated.

What is the course of proceeding?

First, the particulars or catalogues are delivered to a clerk in the auction office at the Excise Office, who calculates the duty; then the auctioneer makes a declaration as to the correctness of the account; a pay-paper is prepared by the Excise clerk, which is taken by the auctioneer to the comptroller in the hall, who enters the amount stated in his book, signs the pay-paper, and hands it over to the receiver, to whom the money is paid; and he enters a statement in his book, and signs a stamp-receipt, if required.

In order to do that, how often must you go to the Excise Office?

Every month.

Do you think it would be desirable to pay more frequently?

I think once a month is often enough; and, if the sale is one of importance, it takes sometimes nearly a month before the accounts can be wound up.

Are you aware of the great number of exemptions to the duty?

Yes; and I think many of them ought not to be allowed, and for this reason, that although the property for sale may not be a bankrupt's, or under execution, the party selling may be equally under distressed circumstances, but now he is made to pay the duty; whereas, property which is sold under execution, bankruptcy, the Court of Chancery, Exchequer, &c. is free, and I never could discover any justice in the distinction. It is a question how far it may be reasonable to charge an auction duty upon produce sold for the first time on account of the importer, and liable to other duties.

Do you suppose that there are many frauds in that branch of the business by things being sold a second time under the pretence of being the first?

My impression is, that the brokers conducting that branch of the business are so respectable, that it is not likely to happen very frequently, and I sincerely wish that other departments were as free from unprincipled interlopers, adventurers, and disreputable practices; but I fear that no effectual remedy can be applied without the aid of the Legislature, by similar enactments to those which exist as to other professions of confidence.

ALEXANDER RAINY.

Extract from the Evidence of Mr. DEHANY, the Solicitor to the Board of Excise.

Mr. DEHANY says, "I know no subject of the excise revenue, which requires more investigation, and is susceptible of more improvement, than the auction duty, if it is retained, at the same time there are several difficulties, as experience has proved, to contend with. You are, I believe, aware of my opinion, that, with respect to real property, it ought to be entirely done away. Large amounts of property are put up to auction, on which duty is never paid, it being bought in to avoid the duty. It is, moreover, in direct opposition to the revenue derivable from the stamp duties on conveyances."

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